IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 26138 of 2006(J)

PETITIONER:

M/S.HITHO APPLIANCES,
KANNUR, REP. BY ITS MANAGING PARTNER,
P.J.THOMAS, AGED 52, S/O.P.T.JOSEPH,
RESIDING AT SHALIMAR HOUSE, CHOVVA,
KANNUR-6.

BY ADV. SRI.M.NARENDRA KUMAR
SMT.LEENA KRISHNAN

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO REVENUE DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM.

2. STATE LEVEL COMMITTEE ON SALES TAX
EXEMPTION, REP. BY DIRECTOR OF INDUSTRIES AND
COMMERCE, THRIUVANANTHAPURAM.

3. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
KANNUR.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE JUDGMENT DT.29.8.2000 IN O.P. NO.19731/1999.

P2: TRUE COPY OF APPEAL FILED BY PETITIOENR BEFORE THE SALES TAX APPELLATE TRIBUNAL ADDL. BENCH, KOZHIKODE DT.1.2.2002.

P3: TRUE COPY OF ORDER DT.20.6.2002 IN TRIBUNAL APPEAL NO.71/2002 BEFORE THE SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOZHIKODE.

P4: TRUE COPY OF ORDER IN THE APPLICATION TO CONDONE DELAY IN FILING THE APPEAL I.P. NO.9/2002 IN T.A. NO.71/02 DT.20.6.2002.

P5: TRUE COPY OF JUDGMENT DT.31.7.2006 IN TRC NO.47/2003 IN THE HIGH COURT OF KERALA.

P6: TRUE COPY OF THE AFFIDAVIT AND PETITION FILED ON I.P. NO.9/2002 IN T.A. NO.71/2002 DT.20.6.2002 BEFORE THE SALES TAX APPELLATE TRIBUNAL.

P7: TRUE OCPY OF THE ADDL. AFFIDAVIT FILED BY PETITIONER BEFORE THE SALES TAX APPELLATE TRIBUNAL DT.8.6.2006.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.26138 of 2006

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Dated this the 28th day of March, 2007.

JUDGMENT

The W.P. is filed challenging Ext.P4 order by which the Tribunal has rejected application filed by the petitioner for condoning delay in filing second appeal for the year 1994-95. I heard counsel for the petitioner and Government Pleader. Petitioner's case is that petitioner was pursuing the matter in the High Court and consequently there was delay in filing statutory appeal before the Tribunal. The contest in the appeal is neither on turnover nor against the tax determined. Petitioner's case is that petitioner was not granted sales tax exemption in terms of revised certificate issued by the District Industries Centre based on order in appeal by the State Level Committee. In fact there is no necessity to file an appeal for getting tax relief based on exemption certificate because exemption if any declined in the original assessment could be claimed in rectification proceeding under Section 43 of the KGST Act. The delay in this case for producing certificate of exemption is on account of contest against denial by the first authority. Since petitioner has later got order in appeal from the State Level Committee and got modified certificate of exemption, I feel relief should be

granted to the petitioner. There is no need for the Tribunal to consider the matter and it is for the officer to consider the revised certificate and grant exemption to the extent covered by it. The W.P. is accordingly disposed of with direction to the Assessing Officer to revise assessment for 1994-95 granting exemption to the petitioner in terms of the revised certificate of exemption produced by the petitioner by rectifying the assessment under Section 43 of the KGST Act within a period of one month from the date of production of copy of this judgment along with revised certificate. I make it clear that the officer will consider whether petitioner has collected tax and if tax was collected, then it should be forfeited under Section 46A(1) of the KGST Act instead of granting refund to the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms